

NO. 86-779

Supreme Court, U.S.  
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1986

EMIL F. DeLORETO and  
JAMES M. DeLORETO,

Petitioners,

vs.

CITY OF SANTA BARBARA,

Respondent.

---

ON PETITION FOR A WRIT OF CERTIORARI TO  
THE COURT OF APPEAL, STATE OF CALIFORNIA,  
SECOND APPELLATE DISTRICT, DIVISION SIX

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RESPONDENT'S BRIEF IN OPPOSITION  
(TIMELINESS)

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101P

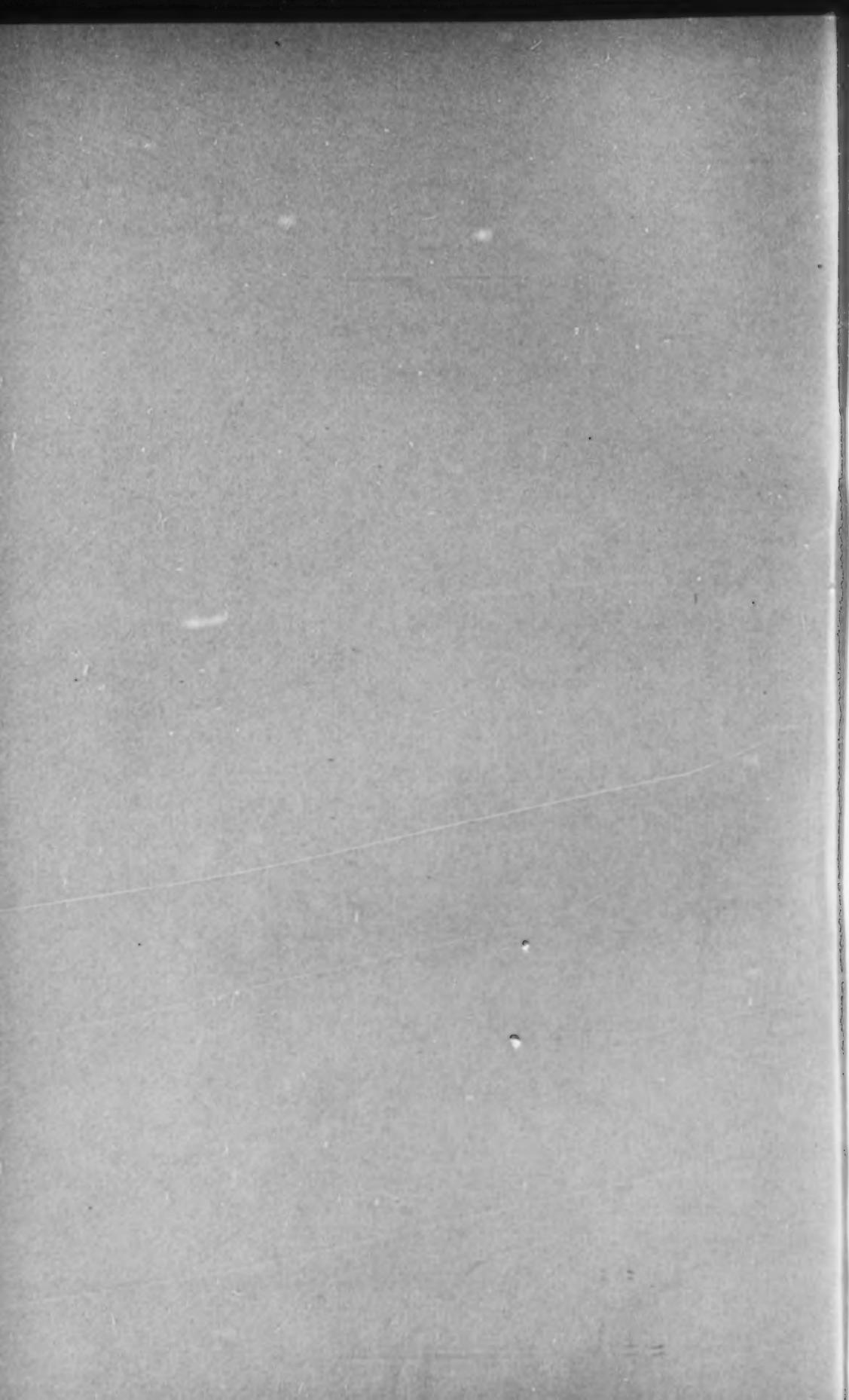


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Respondent City of Santa Barbara  
respectfully requests that this Court deny  
the petition for writ of certiorari  
seeking review of the opinion by the Court  
of Appeal, State of California, Second  
Appellate District, Division Six.



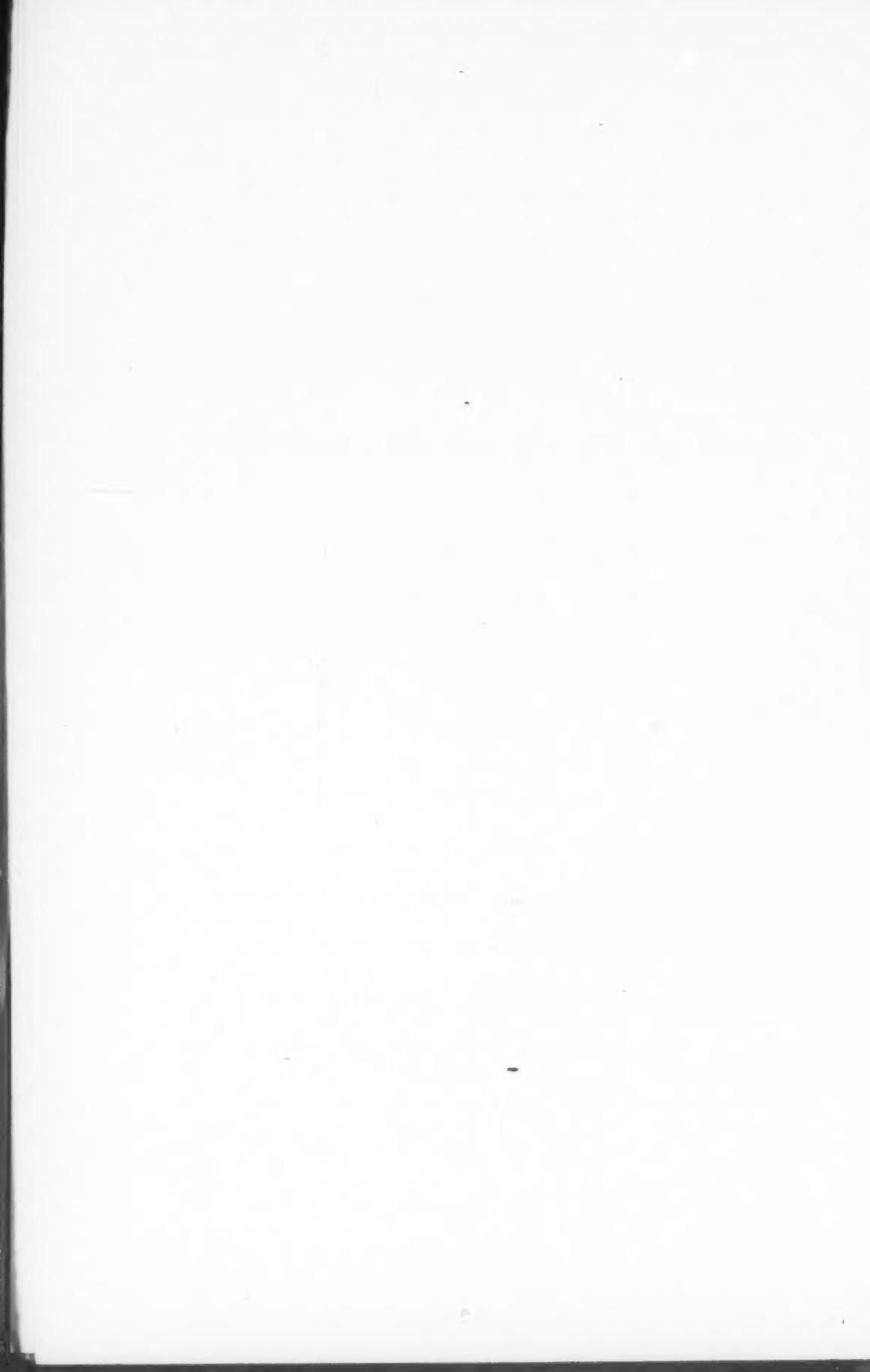
## JURISDICTION

As discussed in more detail below, this Court does not have jurisdiction due to petitioners' failure to comply with the requirements of 28 U.S.C. §2101(c).

### REASONS WHY THE PETITION SHOULD BE DENIED

1. The petitioners have not complied with the requirements of 28 U.S.C. §2101(c) and Supreme Court Rule 20; the petition is untimely.

As noted in petitioners' "Jurisdiction" statement, the California Supreme Court denied a timely petition for review of this matter on July 9, 1986. Thus, 28 U.S.C. §2101(c) would normally require that a petition for certiorari to the Supreme Court be taken by October 7, 1986. On or about October 4, 1986 petitioner mailed a petition for writ of



certiorari to the Supreme Court. That petition would have been timely but for the fact that it did not comply with the format and type size requirements of Supreme Court Rules 21.1(a) and 33.1(c). Acting pursuant to Rule 33.7, the Clerk of the Supreme Court returned all but one copy of the undocketed petition to the petitioners with instructions to "correct the copies as soon as possible. . . ." This was confirmed by a letter from the Clerk to petitioner's counsel dated October 7, 1986. On October 27, 1986 petitioners, by letter, informed the Clerk that the petition was "being retyped" and indicated that it would be mailed within a week's time.

In fact, the petition was not only being retyped, it was being substantially rewritten. As mailed on November 11, 1986, it contained an entirely rewritten statement of "QUESTIONS PRESENTED" and a rewritten "Statement of Why the Writ of



Certiorari Should Issue" which included a discussion of two questions which had not been listed in the original petition. (Questions 1 and 2, page 1 of the November 11, 1986 petition.)

Respondent respectfully submits that the rewriting of the petition and the addition to it of new material constitutes an abuse of the courtesy extended to petitioner's counsel by the Supreme Court Clerk under the authority of Supreme Court Rule 33.7. The practical effect of petitioners' action, if it is allowed to stand, would be to indefinitely extend the period established by Rule 20 within which a petition for Writ of Certiorari must be filed. This "extension" would be available to any person who, unintentionally or otherwise, fails to file a petition which is in conformity with the applicable Court rules. If permitted, it would become an expedient



opportunity to abrogate an important jurisdictional rule of this Court.

Respondent further submits that petitioners, by ignoring the Clerk's request to have their original petition retyped and placed in the proper format and instead submitting a new petition, have failed to apply for a writ of certiorari within the period required by 28 U.S.C. 2101(c). Since it is well established that the time limitation of 28 U.S.C. 2101(c) is jurisdictional in nature, respondent respectfully submits that the petition for certiorari in this matter must be denied for want of jurisdiction.

Department of Banking v. Pink, 317 U.S. 264, 268 (1942); Deal v. Cincinnati Board of Education, 402 U.S. 962 (1971).

2. Respondent's request for an opportunity to file substantive opposition in the event the second petition is deemed timely.

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In the event this Court accepts the second petition as timely and docketed this matter, respondent respectfully requests an opportunity to file an additional substantive brief in opposition to the petition for writ of certiorari.

#### CONCLUSION

The petition for a writ of certiorari should be denied.

Dated: December 9, 1986

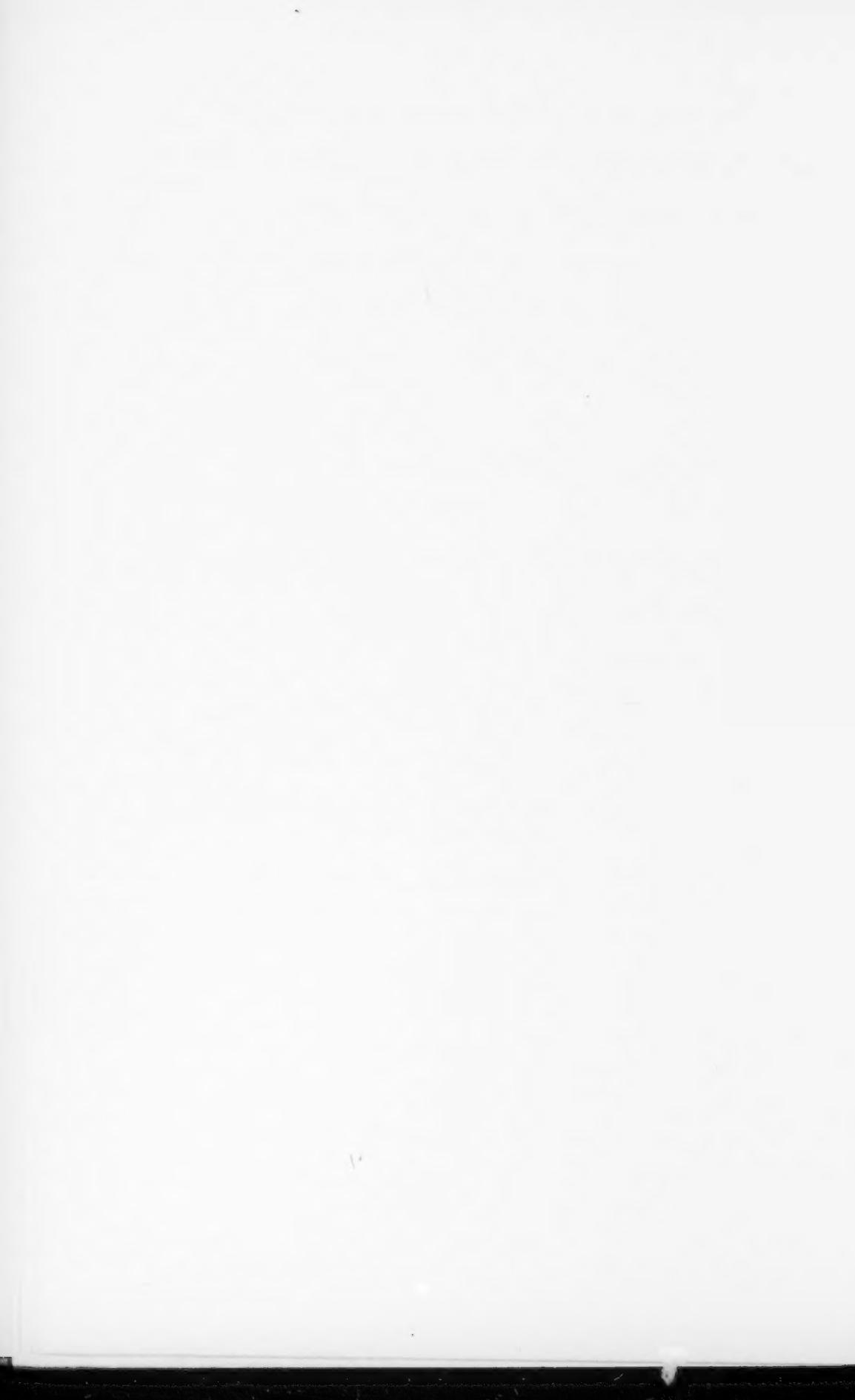
Respectfully submitted,

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Counsel for Respondent  
City of Santa Barbara

AVAILABLE COPY



CERTIFICATE OF SERVICE

I, Steven A. Amerikaner, a member of the Bar of this Court, hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 1986, three copies of the Brief in Opposition to the Petition for Writ of Certiorari in the above-entitled case were mailed, first class postage prepaid, to Richard E. Rader, Post Office Box 1447, Santa Barbara, California, 93102, and James R. DeLoreto, 1216 State Street, #504, Santa Barbara, California, 93101, counsel for the petitioners herein. I further certify that all parties required to be served have been served.

---

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